

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.7.2005

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.1736 of 2000

K.Krishnamoorthy

.. Petitioner

Vs

1. The Sub Registrar
Sankari, Salem District.

2. K.P.Rakkiya Gounder

3. R.Madeswaram

4. C.Muthusamy

5. P.K.Kandasamy

6. K.Palaniappan

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V.N.Mohanraj

For Respondents: Mr.E.Sampathkumar

Government Advocate
for 1st respondent

Mr.Thirumalaisamy for

M/s. Sarvabhauman Associates
for respondents 4 to 6

RR 2 & 3

: NA

ORDER

The petitioner seeks a writ of Certiorarified Mandamus to call for the records of the respondents ending with the order of the first respondent in Objection Petition No.2/99, dated 10.2.1999, to quash the same and to direct the first respondent herein to cancel the registration in Document Nos.135 to 137, dated 11.2.1999 on the file of the first respondent.

2. According to the petitioner he entered into a Sale Agreement

with the second respondent on 30.11.1998 to sell the House Site in Survey Nos.81/2B10, 81/6C1 of an extent of 6293 sq.ft in Padaveedu Village, Tiruchengode Taluk. Even though the petitioner executed a General Power of Attorney on 30.11.1998 in favour of the third respondent and the same was registered as Document No.204 of 1998, he cancelled the said General Power of Attorney on 9.2.1999 under a registered deed, viz., Document No.22 of 1999. Alleging that in spite of cancelling the General Power of Attorney executed in favour of the third respondent, the second and third respondents executed the sale deed in favour of respondents 4 to 6, registered as Document Nos.135, 136 and 137 of 1999 on the file of the first respondent on 11.2.1999, the petitioner has preferred this writ petition.

3. Mr.V.N.Mohanraj, learned counsel for the petitioner submits that in spite of a valid objection made by the petitioner, the first respondent had not enquired into the matter and thus refused to exercise the power conferred under Section 34 of the Registration Act, 1908.

4. Section 34 of the Registration Act, 1908 reads as under:
"Section: 34 - Enquiry before registration by registering officer:

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the person executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26:

PROVIDED that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the person by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have

executed the document; and

(c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders."

(emphasis supplied)

5. A bare reading of Section 34 of the Registration Act shows that the Registering Officer has to (i) enquire whether or not the document was executed by the person by whom it purports to have been executed; and (ii) satisfy himself of the right of the person, in case any person appears as a representative, assignee or agent to execute the document.

6. Under such circumstances, suffice it to direct the first respondent to enquire into the objections made by the petitioner, as referred to above, in the light of Section 34 of the Registration Act, and to pass appropriate orders, on merits, within twelve weeks from the date of receipt of copy of this order.

This writ petition is disposed of accordingly. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

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To:

1. The Sub Registrar
Sankari, Salem District.

+1cc to M/s.Sarvabhauman Associates Sr 29026

+1cc to Mr.V.N.Mohanraj, Advocate Sr 28837

SSV (CO)
km/19.7.



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